

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC., et al.,**

**Plaintiffs,**

**v.**

**Civil Action No. 3:11-cv-0115**

**ERP ENVIRONMENTAL FUND, INC., et al.**

**Defendants.**

**JOINT NOTICE OF SUBMISSION  
OF ADDENDUM TO SECOND MODIFIED CONSENT DECREE**

Pursuant to Fed. R. Civ. P. 6(b) and 60(b) and L.R. Civ. P. 7.1, Plaintiffs Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, Inc., and Sierra Club; Defendant Receivership Estate of ERP Environmental Fund, Inc.; and interested party Panther Creek Mining, LLC hereby submit this joint notice to make part of the docket the attached Addendum executed on August 24, 2021. In support of this Notice submitting this Addendum, we state the following:

1. On October 5, 2017, the Court entered the Second Modified Consent Decree in Civil Action No. 3:11-cv-0115 (ECF 105).

2. Paragraph 43 of the Second Modified Consent Decree provides:

The Second Modified Consent Decree shall remain in effect for a Covered Outfall until that Covered Outfall has achieved compliance with its relevant selenium discharge limits in the relevant Covered Permit for six (6) consecutive months after the actual commissioning date of the treatment technology at that Covered Outfall, three months of which must include analyses of samples taken in December, January, February, or March. After any six-month period that Substituted Defendant believes satisfies the compliance requirements of this paragraph, Substituted Defendant may notify Plaintiffs in writing that they consider the Decree terminated as to such Covered Outfall. After receipt of notice from Substituted Defendant, Plaintiffs shall have thirty (30) days to object to the

Special Master that the required criteria set forth in this Paragraph and/or Paragraph 41 were not met or that conditions under which the system operated during the subject 6-month period are not representative of the anticipated conditions (including, but not limited to, temperature and flow) at this Covered Outfall. After providing an opportunity for a response from Substituted Defendant and a reply from Plaintiffs, any dispute between the Parties shall be resolved by the Special Master.

ECF 105, ¶43.

3. By email on May 24, 2021, and by U.S. mail postmarked May 25, 2021, Defendant Receivership Estate of ERP Environmental Fund, Inc., by and through counsel for Doss Special Receiver, LLC, provided to Plaintiffs a “Notice of Termination Regarding Certain Covered Outfalls.”

4. In order to allow time for continued discussions between and among Plaintiffs, Defendant Receivership Estate of ERP Environmental Fund, Inc., and interested party Panther Creek Mining, LLC, on June 21, 2021, those entities executed the Seventh Addendum to the Second Modified Consent Decree, which extended the deadline by which Plaintiffs must object to the notification pursuant to Paragraph 43 to July 26, 2021.

5. On July 26, 2021, Plaintiffs, Defendant Receivership Estate of ERP Environmental Fund, Inc., and interested party Panther Creek Mining, LLC, executed the Eighth Addendum to the Second Modified Consent Decree, which extended the deadline by which Plaintiffs must object to the notification pursuant to Paragraph 43 to August 25, 2021.

5. At all relevant times, negotiations about a resolution of the May 2021 Notice of Termination have been ongoing.

6. In order to allow additional time for further negotiations between and among Plaintiffs, Defendant Receivership Estate of ERP Environmental Fund, Inc., and interested party Panther Creek Mining, LLC, on August 25, 2021, those entities executed the Ninth Addendum to the

Second Modified Consent Decree, which extended the deadline by which Plaintiffs must object to the May 2021 Notice of Termination pursuant to Paragraph 43 to September 24, 2021.

8. Plaintiffs Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, Inc., and Sierra Club; Defendant Receivership Estate of ERP Environmental Fund, Inc.; and interested party Panther Creek Mining, LLC executed the Ninth Addendum to the Second Modified Consent Decree pursuant to Paragraph 107, of the Second Modified Consent Decree, which provides:

The terms of this Second Modified Consent Decree, including the attached appendices, may be modified only by a subsequent written agreement signed by all Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

ECF 105, ¶107. Because this extension of the objection deadline does not constitute a material change to the Second Modified Consent Decree, Plaintiffs Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, Inc., and Sierra Club; Defendant Receivership Estate of ERP Environmental Fund, Inc.; and interested party Panther Creek Mining, LLC respectfully submit that it does not require approval by the Court under Paragraph 107.

**WHEREFORE**, Plaintiffs and Defendant Receivership Estate of ERP Environmental Fund, Inc. hereby jointly request that this Notice be entered in the docket of the Court.

Date: August 24, 2021

Jointly submitted by:

**/s/ Christopher M. Hunter**

Christopher M. Hunter (WVSB # 9768)  
Jackson Kelly PLLC  
P.O. Box 553  
Charleston, WV 25322  
(304) 340-1000  
*Counsel for Defendant Receivership Estate of  
ERP Environmental Fund, Inc.*

**/s/ Derek O. Teaney**

Derek O. Teaney (WVSB # 10223)  
Appalachian Mountain Advocates  
P.O. Box 507  
Lewisburg, WV 24901  
(304) 646-1182  
*Counsel for Plaintiffs*

**Ninth Addendum to Second Modified Consent Order**

*WHEREAS*, Paragraph 43 of the Second Modified Consent Decree in *Ohio Valley Environmental Coalition, et al. v. ERP Environmental Fund, Inc., et al.*, Civ. No. 3:11-cv-00115, Doc. #105 (S.D. W. Va. Oct. 7, 2016), provides:

The Second Modified Consent Decree shall remain in effect for a Covered Outfall until that Covered Outfall has achieved compliance with its relevant selenium discharge limits in the relevant Covered Permit for six (6) consecutive months after the actual commissioning date of the treatment technology at that Covered Outfall, three months of which must include analyses of samples taken in December, January, February, or March. After any six-month period that Substituted Defendant believes satisfies the compliance requirements of this paragraph, Substituted Defendant may notify Plaintiffs in writing that they consider the Decree terminated as to such Covered Outfall. After receipt of notice from Substituted Defendant, Plaintiffs shall have thirty (30) days to object to the Special Master that the required criteria set forth in this Paragraph and/or Paragraph 41 were not met or that conditions under which the system operated during the subject 6-month period are not representative of the anticipated conditions (including, but not limited to, temperature and flow) at this Covered Outfall. After providing an opportunity for a response from Substituted Defendant and a reply from Plaintiffs, any dispute between the Parties shall be resolved by the Special Master.

ECF 105, ¶43;

*WHEREAS* by email on May 24, 2021, and by U.S. mail postmarked May 25, 2021, Defendant Receivership Estate of ERP Environmental Fund, Inc., by and through counsel for Doss Special Receiver, LLC, provided to Plaintiffs a “Notice of Termination Regarding Certain Covered Outfalls” (hereinafter, the “May 2021 Notice”); and

*WHEREAS* Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy, Sierra Club, Doss Special Receiver, LLC (Special Receiver for the Receivership Estate of ERP Environmental Fund, Inc.), and Panther Creek Mining, LLC are engaged in discussions regarding the May 2021 Notice, those entities agree to the following modification to Paragraph 43 of the Second Modified Consent Decree:

With respect to the May 2021 “Notice of Termination Regarding Certain Covered Outfalls,” Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy, and Sierra Club shall have *until September 24, 2021* to object to the Special Master that the required criteria set forth in this Paragraph and/or Paragraph 41 were not met or that conditions under which the system operated during the subject 6-month period are not representative of the anticipated conditions (including, but not limited to, temperature and flow) at this Covered Outfall.

Except for the deadline by which Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy, and Sierra Club must object to the May 2021 Notice, no other term or condition of the Second Modified Consent Decree is modified by this Ninth Addendum to the Second Modified Consent Decree.

For the Plaintiffs, Ohio Valley Environmental Coalition, Inc., West Virginia Highlands Conservancy, Inc., and Sierra Club:

By: /s/ Derek O. Teaney

Date: August 24, 2021

For Doss Special Receiver, LLC (Special Receiver for the Receivership Estate of ERP Environmental Fund, Inc.):

By: /s/ Christopher M. Hunter

Date: August 24, 2021

For Panther Creek Mining, LLC:

By: /s/ Christopher M. Hunter

Date: August 24, 2021